

REMARKS

Claims 25-47 are in the application; claims 25-44 are elected **with traverse**.

Applicant traverses the restriction requirement in view of the amended claims for the following reasons. The amended claims 25-44 are not anticipated by *US 6,174,670* to *Wittwer et al.* so that groups I and II have a common technical feature that makes a contribution over the prior art. Claim 25 defines that the detection probe and the control nucleic acid are single-stranded; the same features have been introduced into claims 45-47.

Wittwer et al. disclose a method for detecting a nucleic acid in a sample by amplification (PCR) and hybridization of the PCR products and by using a detection probe. The use of a single-stranded control nucleic acid is not disclosed in this reference. Therefore, the claims as amended are not anticipated by *Wittwer et al.* See also International Preliminary Report on Patentability (IPRP) prepared by the International Preliminary Examining Authority (IPEA).

Wittwer et al. also does not make obvious the claims as amended. In the International Preliminary Report on Patentability it is stated under the heading 4. INVENTIVE STEP that the single-stranded control nucleic acid of the present invention becomes double-stranded on amplification and the double-stranded control nucleic acid binds the same probe as the target nucleic acid but the different melting temperatures allow differentiation. It is further stated that *Wittwer et al.* (reference is being had to examples 20 and 21) mentions the use of "competitors" that differ from the target nucleic acid by a single base and have a different melting temperature; therefore, *Wittwer et al.* discloses that mutated target sequences can be identified. This is believed to negate

inventive step.

Applicant respectfully disagrees. The mutated target sequences are double-stranded and cannot make obvious the inventive principle of adding deliberately a single-stranded control nucleic acid that can be tailored synthetically in adherence with the provisions set forth in the instant specification (see page 6, 3rd and 4th paragraphs). In particular, the specific temperature ranges or differences defined in claims 26, 27, 33, 34 are not suggested or obvious.

Should the Examiner have any further objections or suggestions, the undersigned would appreciate a phone call from the examiner to discuss appropriate amendments to place the application into condition for allowance.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on December 15, 2006,

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